IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
APPEAL FROM ORDER NO.118 OF 2007
WITH
CIVIL APPLICATION NO.172 OF 2007
IN
APPEAL FROM ORDER NO.118 OF 2007

Jayantilal Sukhlalji Jain ....Appellant.

V/s

The Municipal corporation of
Greater Bombay. .....Respondent.

Mr. S.S. Redkar for the appellant.

Mrs. Geeta Joglekar for Respondent - Corporation.

CORAM: A.M. KHANWILKAR, J.
DATE : 27th February, 2007

P.C:

1. Heard Counsel for the parties.

2. Admit. Counsel for the respondent waives notice.

3. As short question is involved, appeal is taken up for final disposal forthwith by consent.

4. This appeal from order takes exception to the judgment and order passed by the City Civil Court, Bombay dated 13/2/2007 in Notice of Motion No. 488 of 2007, thereby, rejecting the prayer for grant of ad-interim ex-parte injunction during the pendency of the Notice of Motion for interim relief. The case of the appellant is that the structure in question is in existence prior to 01/01/2000. To support that plea, the appellant would rely on several documents, amongst other, Registration Certificate of Establishment issued by the authority under the provisions of Bombay Shops and Establishments Act, 1948 which relates back to year 1997. According to the appellant, this document was produced before the authority. In spite of that, the authority, the Assistant Commissioner, proceeded to hold in his communication dated 10/02/2007 that the appellant has failed to establish existence of the structure prior to 01/01/2000. The appellant approached the Trial Court by way of L.C. Suit No.612 of 2007 praying for declaration and injunction. The plaintiff - appellant also moved the Trial Court for ad-interim protection till Notice of Motion for interim relief is heard and disposed of. The Court, by impugned judgment, has rejected that prayer on the reasoning that the documents produced by the plaintiff would indicate that the structure in the notice and the order of the Assistant commissioner

comes in the way of widening of the road and, thus, plaintiff is not entitled to any protection. The fact that the structure is affecting road widening cannot be the basis to deny the claim of the appellant about its existence prior to 01/01/2000. The fact that the structure was in existence prior to 01/01/2000 is established, amongst other, on the basis of Registration Certificate of Establishment which relates back to the year 1997. It would be a different matter that the structure will have to be eventually removed for road widening project but, before that, the appellant will have to be provided an alternative suitable accommodation as per the extant policy. Suffice it to observe that the case for grant of ad-interim relief was made out by the appellant.

5. Accordingly, impugned judgment and order deserves to be set aside and, instead, appellant is granted ad-interim relief in terms of prayer clause (a) of the Notice of Motion. Having regard to the fact that the structure is likely to affect road widening project which is a public purpose, hearing of the Notice of Motion will have to be expedited. The Trial Court shall dispose of the Notice of Motion as expeditiously as possible, preferably by the end of March, 2007. Parties shall appear before the Trial Court. Parties shall inform the Trial Court about this direction when the Notice of Motion is notified

tomorrow for hearing so that appropriate directions can be passed by the Trial court to ensure that Notice of Motion is disposed of by the end of March, 2007.

6. Appeal from order is disposed accordingly.

7. In view of the above order, Civil Application is disposed of.

A.M. KHANWILKAR, J.